

Chair

Members:

Vice Chair

**COUNTY OF KAUAI CHARTER REVIEW COMMISSION
NOTICE OF ORIENTATION MEETING AND AGENDA**

Monday, September 25, 2017

4:00 p.m. or shortly thereafter

Mo'ikeha Building, Meeting Room 2 A/B

4444 Rice Street, Lihue, HI 96766

Oath of Office for new members Isaac Cockett, 1st term ending 12/31/19; Virginia (Gini) Kapali, 1st term ending 12/31/18; Galen Nakamura, 1st term ending 12/31/18; Jan TenBruggencate, 1st term ending 12/31/19; Ricky Watanabe, 1st term ending 12/31/19

MAYOR'S WELCOME

CALL TO ORDER

ELECTION OF CHAIR AND VICE CHAIR FOR CALENDAR YEAR 2017

APPROVAL OF MINUTES

BUSINESS

CRC 2017-01 Orientation by the County Attorney's Office regarding the duties of the Charter Review Commission and the rules and laws under which it operates

CRC 2017-02 Review and Possible Approval of Meeting Schedules for 2017 and 2018

ANNOUNCEMENTS

Next Meeting: Monday, October 23, 2017, 4:00 p.m., in the Moikeha Building, Meeting Room 2A/2B

ADJOURNMENT

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

Cc: Deputy County Attorney Adam Roversi

PUBLIC COMMENTS and TESTIMONY

Persons wishing to offer comments are encouraged to submit written testimony at least 24-hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;
2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only; and
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and
5. If testimony is based on a proposed Charter amendment, list the applicable Charter provision.

While every effort will be made to copy, organize, and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The Charter Review Commission rules limit the length of time allocated to persons wishing to present verbal testimony to five (5) minutes. A speaker's time may be limited to three (3) minutes if, in the discretion of the chairperson or presiding member, such limitation is necessary to accommodate all persons desiring to address the Commission at the meeting.

Send written testimony to:

Charter Review Commission

Attn: Lani Agoot

Office of Boards and Commissions

4444 Rice Street, Suite 150

Līhu'e, HI 96766

E-mail: lagoot@kauai.gov

Phone: (808) 241-4917 Fax: (808) 241-5127

SPECIAL ASSISTANCE

If you need an alternate format or an auxiliary aid to participate, please contact the Boards and Commissions Support Clerk at (808) 241-4881 at least five (5) working days prior to the meeting.

Charter Commission Orientation

The purpose of this orientation is to provide new members of the Charter Review Commission with some brief background on the origin and nature of the County Charter, as well as the responsibilities of the Commission.

I. The Origin of County Charter Authority

Article VIII, section 2, of the Hawai'i Constitution provides,

Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such procedures, however, shall not require the approval of a charter by a legislative body.

Charter provisions with respect to a political subdivision's **executive, legislative and administrative structure and organization** shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

A law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section: [Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978]¹

Prior to the Constitutional Convention of 1968, County Charters were no more than statutory charters subject to continuing control by the state legislature. During the 1968 Constitutional Convention, however, Article VIII, section 2 was amended to make County Charters superior to state law to the extent that charter provisions that "relate to a [County's] executive, legislative and administrative structure and organization are entitled to a status superior to a statute." Hawai'i Government Employee's Ass'n, v. County of Maui, 59 Haw. 65, 76, 576 P.2d 1029, 1036 (1978).

Related to Article VIII, section 2, Hawai'i Revised Statutes ("HRS") § 50-6 empowered the various counties to organize charter commissions to draft charters setting forth "**the structure of the county government, the manner in which**

¹ Prior to the 1978 Constitutional Convention what is now Article VIII, section 2 was codified as Article VII, section 2.

it is to operate, the powers of the county in local affairs, and shall provide for orderly transition from the present government to government under the charter.”

HRS § 50-10 in turn provides that, “upon adoption, the charter shall become the organic law of the county and shall supersede any existing charter and all laws affecting the organization and government of the county which are in conflict therewith.”

In sum, at its origin the County Charter Commission was empowered to draft a charter setting out the “executive, legislative and administrative structure and organization” of the County, which thereafter superseded any existing state law. By extension the Charter is not designed to define other than the structure of County government, and cannot supersede laws of statewide concern outside of the Charters purview.

II. The Creation of a Permanent Charter Review Commission

Prior to the 2016 election, the Kauaʻi County Charter provided for a creation of a Charter Review Commission at ten year intervals. In the 2016 election, however, the voters amended the County Charter to provide for a permanent charter Review Commission:

Section 24.03. Charter Review. The mayor with the approval of the council shall appoint, with appropriate staffing, a charter commission composed of seven members who shall serve in accordance with section 23.02C of this charter to study and review the operation of the county government under this charter. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish summaries of any such amendments or new charter not less than thirty days before any election at least once in a newspaper of general circulation within the county and the entire text of the amendments or new charter by electronic or online publication on the official website of the County of Kauaʻi. (Amended 2006, 2014, 2016)

Although the Commission is now permanent, its ability to effect change in the County Charter is still tied to election cycles.

III. Proceedings of the Charter Review Commission

Hawai'i "Sunshine Law", HRS § 92,, and to a lesser extent the County Charter itself, section 23.08, require the Charter Review Commission to conduct its meetings and business in a manner that is as open to the public and public participation as possible.

HRS § 92-1 summarizes the general policy and intent of the Sunshine Law as follows:

In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

To effectuate this policy of open government, the remainder of Chapter 92 imposes the following general requirements on all boards and commissions:

Notice & Agenda -

- The time place and agenda of each Commission meeting must be publicly noticed at least six days in advance of any scheduled meeting;
- The Agenda must list the business to be considered in sufficient detail "so as to provide the public with adequate notice of the matters under consideration so the public can choose whether to participate;
- While the Commission may add to or modify an agenda during a meeting by a 2/3 vote, it may not do so if: 1) the item is of "reasonably major importance"; or 2) action on the item will affect a significant number of people.

Conduct of Meetings -

- The Commission is required to accept public testimony, oral and written, on any agenda item, but may limit testimony unrelated to the agenda;

- The Commission may, and has by rule, limited the amount of time allocated to individual speaker for public testimony;
- Generally Commission members may not meet to discuss Commission business outside of properly noticed public meetings. See HRS § 92-2.5 for exceptions to general rule.

Executive Session –

- HRS § 92-5 sets out eight limited situations in which a Board may close a public meeting and enter executive session. Given the Commission’s mission and duties most of these open meeting exceptions will, however, be inapplicable to the Commission. Possibly relevant to the Commission, it may enter executive session for the following purposes:

(4) To consult with the board’s attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;

...

(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

Beyond these general requirements imposed by state law, the Commission is empowered by the County Charter, section 23.02(N), to enact rules of procedure necessary to conduct its business, which a prior Commission adopted in 2007. These Rules are attached for your reference and review. I encourage you to read them over carefully and become intimately familiar with them. The Commission is empowered to amend these Rules as it sees fit, subject to the procedural requirements of HRS § 91.

**RULES OF THE CHARTER REVIEW COMMISSION
COUNTY OF KAUAI**

RULE 1. QUORUM

The quorum required for the Commission to hold meetings shall be fixed at four members, the majority of the entire Commission.

RULE 2. VOTING: RULE OF THE MAJORITY

- a. Procedural matters, requests for information, and internal Commission matters shall require the approval of a majority vote of those present at any meeting.
- b. Matters of substance shall require the approval of four members of the Commission. Proposed charter changes require a minimum review at two meetings, adoption and/or approvals of the Commission as set forth in Rule 4.
- c. Each member shall have one vote. No votes by proxy shall be permitted.
- d. Any member can vote on a pending motion and participate in discussion on every debatable motion before it is finally acted upon. The holding of an office on the Commission shall not disqualify the member from making motions, participating in debate, or voting.
- e. Voting shall be by voice or by show of hands. A roll call vote shall be required when requested by any member.

**RULE 3. PROPOSED AMENDMENTS TO THE CHARTER; FORM;
STATEMENT OF PURPOSE**

A charter amendment proposal may be prepared on a form whose content is approved by the Commission. Any such form should include the following information:

- a. A brief description of the purpose of the proposal and of the problem being addressed by the proposal;
- b. If applicable, the citation of the charter provision(s) proposed to be deleted or amended;

- c. If the proposal is based on a provision or provisions in the charter or laws of another jurisdiction, the name of the jurisdiction and, if possible, a copy of the relevant provision(s) attached to the proposal;
- d. Copies of other written materials supporting the proposal, if relevant; and
- e. The text of the proposed charter amendment in the Ramseyer format.

RULE 4. PROCEDURES FOR THE CONSIDERATION AND ADOPTION OR APPROVAL OF PROPOSED AMENDMENTS TO THE CHARTER

The following procedures shall be followed in the consideration and adoption or approval of the proposals for the amendment of the charter:

- a. Introduction of the proposal(s) for the amendment of the charter for consideration by the Commission;
- b. Upon adoption or approval of the proposal(s) by the Commission, the Commission shall refer the proposal(s) to legal counsel for recommendations regarding legality and compliance with statutes and superior laws, and may refer the proposal(s) to appropriate agencies, organizations or persons for their recommendations regarding the proposed amendment;
- c. Upon receipt of the recommendations of legal counsel and/or the appropriate agencies, organizations, or persons to which the proposal(s) have been referred, the Commission may reconsider the proposal(s) and make such substantive and/or legal changes to the proposal(s) as it may deem necessary;
- d. Upon reconsideration and/or adoption or approval of substantive and/or legal changes to the proposal(s) by the Commission, the Commission shall further consider the proposal(s) for final and proper arrangement and order of the proposed amendments; and
 - Examine and correct the proposals which are referred to it and, as may be applicable, the statement of intent or purpose accompanying each proposal, for purposes of avoiding inaccuracies, repetitions and inconsistencies;
 - Draft in the same style as required for specifically worded proposals (Ramseyer drafting style), the correct and appropriate charter language for ideas or conceptual proposals which are referred to it; and

- Arrange the proposed amendments in the proper order in the charter.

Where a proposal referred to the Commission appears inconsistent with or in conflict with a proposal already acted upon favorably by the Commission, the Commission shall resolve the inconsistency or conflict.

- e. After all proposals to amend the Charter have been disposed of, the Commission will review all proposals that have been tentatively approved. The Commission will consider each proposal on its merits paying attention to the manner in which each proposal relates to the Charter as a whole.
- f. After all proposals have been finally reviewed, the Commission shall propose the form in which the proposed amendments are submitted to the electorate. The Commission shall also be responsible for proposing and implementing a public education program to acquaint the electorate with the proposed amendments.

RULE 5. COMMITTEES OF THE CHARTER COMMISSION; APPOINTMENT OF MEMBERS

- a. The Commission may create such standing and special committees as it deems necessary. The members of the special and standing committees shall be appointed by the Commission.

RULE 6. FUNCTIONS AND DUTIES OF THE STANDING AND SPECIAL COMMITTEES

Standing and special committees of the Commission shall perform such functions and duties as may be required by the instructions of the Commission.

RULE 7. TESTIMONY BY MEMBERS OF THE PUBLIC

The Commission shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The Commission shall also afford all interested persons an opportunity to present oral testimony on any agenda item. Whether comments are relevant shall be determined by the Chair.

Oral testimony from interested persons shall be limited to five minutes but such time limit shall not include pertinent responses by the speaker to questions posed by the members of the Commission. Speakers should be requested to submit two copies of their testimony to the Commission but the failure to provide testimony shall not bar a person from speaking. Speakers should also

be asked, but not required, to provide their names as part of their testimony. A speaker's time may be limited to three minutes if, in the discretion of the Chair, such limitation is necessary to accommodate all persons desiring to address the Commission at that meeting.

Those interested persons desiring to address comments to the Commission may be asked to register with the staff secretary at the beginning of the meeting; however, testifiers shall not be barred from testifying if they fail or refuse to register with the staff secretary.

RULE 8. OFFICERS AND STAFF OF THE COMMISSION

- a. The officers of the Commission shall be a Chair and Vice Chair who shall be elected by the Commission.
- b. It shall be the duty of the Chair of the Commission:
 - 1) To preside at all meetings of the Commission;
 - 2) To receive all communications and present them promptly to the Commission;
 - 3) To authenticate by signature all acts of the Commission as may be required by law and to sign all instruments requiring execution or agreement by the Commission;
 - 4) To promptly refer all charter amendment proposals and other matters to the full Commission or to the appropriate standing committee, subject to appeal;
 - 5) To appoint members of committees in accordance with Rule 5;
 - 6) To preside at all permitted executive sessions of the Commission;
 - 7) To direct the preparation of the agenda for meetings of the Commission and to have the agenda posted and filed with the Office of the County Clerk in accordance with Section 92-7, Hawaii Revised Statutes;
 - 8) To consult with the staff of the Commission and preside over staff meetings;
 - 9) To provide for the coordination of all administrative activities of the Commission and to see that they are honestly, efficiently, and lawfully conducted;

- 10) To serve as the chief spokesperson for the Commission before the public, the media, the State and federal governments, the County Council and the County Administration; and
- 11) To perform such other duties as may be required by law or as may properly pertain to the office.

c. It shall be the duty of the Vice Chair of the Commission:

- 1) To exercise all the duties and powers of the Chair in the Chair's absence;
- 2) To assist the Chair as needed; and
- 3) To perform such other duties as are prescribed by law or assigned by the Commission.

d. It shall be the duty of the staff secretary to the Commission to:

- 1) Prepare the agenda for meetings of the Commission at the direction of the Chair and transmit the agenda to the Office of the County Clerk for posting in accordance with HRS Section 92-7;
- 2) Maintain a record of the agendas of the Commission and of its Committees;
- 3) Prepare accurate minutes of the meetings of the Commission and the Commission's standing committees, and maintain files thereof, all in accordance with Section 92-9, Hawaii Revised Statutes;
- 4) Maintain a file of written disclosures made by Commission members pursuant to Rule 10;
- 5) To number and maintain a record of all written charter amendment proposals, communications, testimonies and petitions brought before the Commission;

- 6) To maintain a current copy of the Rules of the Commission;
 - 7) To maintain files containing all other written records of the Commission, including any contracts of the Commission;
 - 8) As may be necessary and at the direction of the Chair or Commission, to receive and draft correspondence on behalf of the Commission;
 - 9) To transmit the records of the Commission kept by the staff secretary to the County Clerk or other archive designated by the County Attorney after the work of the Commission has been completed; and
 - 10) To perform such other duties as are prescribed by law or assigned by the Commission.
- e. Any officer may delegate, by administrative directive, any of the administrative duties assigned to the officer under these rules to another Commission member or to a member of the Commission staff, provided that the officer shall take reasonable measures to ensure that any delegated duties are being faithfully performed.

RULE 9. PARLIAMENTARY AUTHORITY

Meetings shall be conducted in accordance with the procedures established in these Rules. On all matters of procedure not addressed in these Rules, the Commission may refer to *Robert's Rules of Order, Newly Revised (10th Edition)*, for guidance in developing procedures for the conduct of Commission meetings.

RULE 10. DISCLOSURE OF INTEREST

Written Disclosure. Whenever a member of the Commission possesses or acquires such interests as might reasonably tend to create a conflict with the public interest, the member shall make full disclosure in writing to the Commission. Such disclosures shall be a matter of public record and filed with the staff secretary.

RULE 11. SUSPENSION OF THE RULES

Unless superseded or prohibited by state or county law, these Rules may be suspended by the affirmative vote of a majority of the entire membership of the Commission.

RULE 12. AMENDMENT AND REPEAL OF RULES

Subject to applicable law including, but not limited to, Haw. Rev. Stat. chapter 91, these Rules may be amended or repealed upon the affirmative vote of a majority of the entire membership of the Commission.

**CHARTER COMMISSION
COUNTY OF KAUA'I, HAWAII**

(s) Jonathan Chun
Chairperson

APPROVED AS TO FORM
AND LEGALITY:

(s) Rosa Flores
County Attorney

Received this 22nd day of
October, 2007

Approved this 22nd day of
October, 2007

(s) Peter Nakamura
Peter Nakamura
County Clerk, County of Kauai

(s) Bryan J. Baptiste
Bryan J. Baptiste
Mayor, County of Kauai

CERTIFICATION

I hereby certify that the Charter Commission of the County of Kauai adopted the foregoing administrative rules of the Charter Commission on October 26, 2005, under authority of chapter 91, Haw. Rev. Stat., as amended, and that the provisions of Sec. 91-3, Haw. Rev. Stat., as amended, have been satisfied, including the holding of a public hearing on August 3, 2005, and the giving of proper notice for the public hearing, which notice was advertised in The Garden Island on July 3, 2005 and July 6, 2005.

Dated at Lihue, Kauai, this 22nd day of October, 2007.

(s) Barbara Davis

Secretary

CHARTER COMMISSION

CERTIFICATION OF COUNTY CLERK

I hereby certify that on October 22, 2007, I accepted for filing from the Charter Commission of the County of Kaua'i the foregoing rules of the Charter Commission adopted on October 26, 2005.

(s) Peter Nakamura

Peter Nakamura, County Clerk, County of Kauai

CHARTER REVIEW COMMISSION MEETING DATES FOR 2017-2018

The Charter Review Commission meets on the 4th Monday of every month at 4:00 p.m., in the Mo'ikeha Meeting Room 2A/2B. Below are the meeting dates through 2018:

September 25, 2017

October 23, 2017

November 27, 2017

December - No Meeting

January 22, 2018

February 26, 2018

March 19, 2018

April 23, 2018

May 21, 2018

June 25, 2018

July 23, 2018

August 27, 2018

September 24, 2018

October 22, 2018

November 26, 2018

December -No Meeting

****In order to determine quorum, please be sure to let the Office of Boards and Commissions (or your support clerk) know if you are unable to attend a meeting.**

**COUNTY OF KAUAI
CHARTER REVIEW COMMISSION
2017 MEETING SCHEDULE**

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HOLIDAYS:

Jan 01	New Year's Day	Jul 04	Independence Day
Jan 16	Dr. Martin Luther King, Jr. Day	Aug 18	Statehood Day
Feb 20	Presidents' Day	Sep 04	Labor Day
Mar 26	Prince Jonah Kūhiō Kalanianaʻole Day	Nov 11	Veterans' Day
Apr 14	Good Friday	Nov 23	Thanksgiving Day
May 29	Memorial Day	Dec 25	Christmas Day
Jun 11	King Kamehameha I Day		

COUNTY OF KAUA'I

CHARTER REVIEW COMMISSION

2018 MEETING SCHEDULE

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Jun 11	King Kamehameha I Day	Dec 25	Christmas Day